

Jerome's Effort to Bring About a Commission in Insanity for Thaw Is Blocked by a Ruling of the Court

pick in his teeth. His lawyers and his experts were packed so closely about him that they touched elbows and shoulders on three sides of him in a compact little breakfast. Jerome leaned against a table watching the face of the witness.

Mrs. Thaw was asked to recall conversations which she had with her son prior to his departure for Europe in the spring of 1904. Jerome objected to the question. The California attorney argued at length in reply, contending that these conversations were vitally important in proving the strange condition of the defendant's mind even at that early time.

JEROME SHOWS IMPATIENCE.

Jerome retorted with rising inflection: "If it is presumed that this defendant was insane at the time of these conversations and continued insane right down the line until June 25, then it must be presumed that he is still insane, that he is insane to-day. Then, in that case, it is time to stop this trial."

"This argument of the District-Attorney was in the nature of a sensation, showing as it did that the prosecutor is prepared to break through every offered opening to prove Thaw a madman and send him to the Matteawan Asylum for the Criminal Insane."

"This is not the matter at issue," said Delmas. "The District-Attorney takes the wrong view of the proposition. It being established by the evidence that the defendant was insane in June, 1906, we hold it pertinent to show that this insanity was due to revelations made to him by a young girl and that the insanity dated back to November, 1903. Under those circumstances I hold we have a right to show the existence of insanity during any period between the date of the young woman's story and the date of the tragedy. No presumption of the sanity or insanity at the present moment can have a part in this trial as it is now conducted."

THE DISTRICT-ATTORNEY'S ARGUMENT.

The District-Attorney held that the conversation which Mrs. Thaw had asked to relate dealt with a period when, according to the testimony of Thaw's own experts, he might have been having a lucid interval.

"Mr. Delmas takes the attitude that his client is lucid at this moment. Why, then, in the absence of any direct evidence to the contrary, shall we presume that the defendant was not in a lucid condition at the time of his conversation with his mother in the spring of 1904? There is no proof in evidence that he was insane at that particular period."

Jerome was basing his fight on the admission he got this week from Evans and Wagner.

Justice Fitzgerald replied to the prosecutor that it was not the function of the Court to stop a trial and appoint a commission.

"IT IS NOT THE DUTY OF THIS COURT," SAID THE JUSTICE. "TO APPOINT A COMMISSION ON WHAT IS MERELY A GENERAL PRINCIPLE OF EVIDENCE. THERE IS A PRESENT NO MOTION LOOKING TO THE APPOINTMENT OF A COMMISSION IN LUNACY BEFORE ME. THEREFORE THIS ARGUMENT SHOULD NOT PERTAIN TO ANY COMMISSION OF LUNACY, BUT TO THE DISPUTED MATTER OF THE EVIDENCE WHICH THE DEFENSE DESIRES TO OFFER."

Then the Court asked the District-Attorney if he was ready to go ahead and object to the question that had been put to Mrs. Thaw. Jerome said he renewed his objection on the ground that it had not been established that Thaw was insane in June, 1904, at the time of the conversation the witness was asked to tell about. Mr. Delmas replied again at some length, and in the argument that followed a considerable crop of microscopic hairs were split.

Mrs. Thaw sat erect with her back held rigidly away from the chair in which she sat, with her eyes half closed as if to shut out the picture of the listening court.

Her mouth drooped at the corners and her hands lay listlessly in her lap. She had taken off her glasses and one could see the thick network of the lines written about her eyes. A Jerome warned to his argumentative face she flung her head back, challenging him with her gaze.

Justice Fitzgerald suddenly produced from under his desk a volume of New York Reports and quoted from a decision which held that where insanity was established as existing once, it was presumed to continue to exist. His Honor, with obvious purpose, emphasized the distinction between the establishment of the fact of insanity and the presumption of it.

"I therefore overrule the District-Attorney's objections," he said. "Proceed, Mr. Delmas."

GREAT VICTORY FOR THE DEFENSE.

It was a victory for the defense, not alone upon the point of the evidence, but because it pretty effectually barred Jerome from any hope of asking for a lunacy commission on a mere presumption of present insanity.

"I was Delmas's question to get in," Jerome told us when it was your son first revealed to you this young girl's name?"

"Not positively. I believe it was some time between Thanksgiving and when Harry went back to Europe, in the spring of 1904."

The old woman raised her gloved hand, ticking off her words with the forefinger of the right upon the palm of the left.

"What was it he told you?"

"It was about the same thing all the time. He explained and I sympathized with him."

"Now, what was it he told you about this young girl?"

"He told me about how she had posed for various artists, finally going to New York, where she went on the stage. There she had met this wicked man he spoke of."

"Is that practically all you can remember of these conversations?"

"Yes."

Purely from the standpoint of the attitude in which the Thaw family had held Evelyn Nesbit Thaw, this was important. It showed that long before the date of the marriage of the pair, the mother at least knew the secret of her future daughter-in-law's painful story.

Mrs. Thaw was then asked to relate conversations she had with her son upon his return from Europe in the fall of 1904.

"When he came back at this time," said Mrs. Thaw, "there was a horrible scandal about the ruin of this girl. It was terrible!"

"I remember," continued the witness, "expressing my disapproval of his coming back on the same steamer with the girl, and I also spoke of certain rumors that had been sent from the other side. He said there was nothing wrong in his actions and that these rumors were untrue."

"Did he express his desire to marry her as early as the fall of 1903?"

"Yes, I think he did. I did not approve."

"I believe you went South in February, 1905?"

"I think it was 1904."

"Do you not mean 1905?"

"Perhaps I do. Yes, I am sure I do. But do not ask me about dates. I can never remember dates. I can only recall days like Christmas and Thanksgiving Day." Then she added, as if by an afterthought and with a simple little gesture, "Oh, yes, and of course I remember my wedding day."

"Did you see your son Harry upon your return from the South?"

"Yes."

"Did he speak to you then of the young woman for whom he cared?"

"Yes."

"What was said?"

"He told me that he wanted to marry her," said the old lady faintly, "and that he could never get along without her. This was in March, 1905, about two months before the wedding."

AGREED THAT HE SHOULD MARRY.

"Seeing how he felt, I told him that it was probably the least of two evils, and that he should marry her. I told him the question was not for him to decide. Then he asked me if I would go on to New York and see her. I said I would. I told him he did not need my approbation; that the matter was one for him to decide, and—"

"I object to the form of the statement," said Jerome. "The answer is not the proper one."

"The lady is laboring under some delusion," began Delmas.

"Not now," said Mrs. Thaw, with a grave little smile. "I think I can go on now."

"So you finally gave your consent to have the marriage take place in your home?" said Delmas.

"Yes."

"Did you make a condition?"

"YES. I WANTED IT UNDERSTOOD THAT HER MOTHER WAS NEVER TO COME TO SEE ME AND NEVER ENTER OUR HOME IN PITTSBURGH. I ALSO MADE IT A CONDITION THAT HER PAST SHOULD NEVER BE OPENED AND DISCUSSED. I SAID THAT I, FOR ONE, WOULD NEVER MENTION IT IN ANY WAY OR BRING IT UP. THAT IS ALL THAT I DESIRED. ALL THAT I ASKED OF HIM, I DID ARRANGE THAT CHAPERONS SHOULD BE SENT TO ACCOMPANY THE YOUNG LADY TO MY HOME, AND I ALSO CAME TO NEW YORK TO MEET HER."

"Describe, please, now his speech, his manner and his conduct at this time?"

"He seemed to fear that the girl's mother would withhold her consent to the marriage and under the laws of our State a parent's consent is needed before a minor can marry. He was greatly excited over this matter. He said he feared at the very last the mother might refuse her consent. He finally got her approval about noon of his wedding day. All that afternoon I saw him writing at his desk and I knew that he was drawing up his will and a codicil to it."

"Where did they go after the wedding?"

"On a bridal tour to California. Then they came back to my summer home in the mountains of Pennsylvania."

"Describe their life at this period—I mean during the summer they spent with you—the summer of 1905?"

"Their life was contented, placid and happy. My son and his wife seemed devoted to each other."

Here the testimony rested for a ten-minute recess. Mrs. Thaw returned to the witness room seemingly glad of the respite.

As soon as the recess was over Mrs. Thaw came back to the stand, with

a pinkish, faded-rose flush in her cheeks. She thanked a bailiff as he put his hand under her elbow and aided her to mount the steps of the witness stand.

DEFENSE SUDDENLY STOPS EXAMINATION.

Then, very much to the surprise of the crowd, Mr. Delmas announced that the direct examination was ended. All along it had been expected that Mrs. Thaw would testify to pre-natal influences which she believed had affected Harry Thaw's mind. But Delmas had not caused her to tell of the shock to her nerves when, a few months before Harry Thaw's birth, she found one of her children dead in bed at her side. Neither had he asked her about the taint of insanity in her family. It was evident that the attorney for the defense had been made fearful by Jerome's cross-examination of their experts and wished now to get entirely away from the suggestion of hereditary insanity in his blood.

Jerome took up the cross-examination in this fashion: "Your son had learned to play the piano in his youth?"

"Yes, when he was a very young boy."

"Were you an executor of your husband's will?"

Delmas objected. Mr. Jerome said that he wanted to show that at a certain date Mrs. Thaw had increased the income of her son. He wanted to get on record that the defendant's father had limited the son's allowance.

"That is not true at all. I have been told not to answer," said Mrs. Thaw when asked if she had done this. Mr. Delmas counseled her that she must answer all questions unless he first objected. Then, addressing the Court, Mr. Delmas said that the subject matter of the question of the father's will did not fall within the period covered by the direct examination.

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